

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals  
for the Second Circuit, held at the Daniel Patrick Moynihan  
United States Courthouse, 500 Pearl Street, in the City of  
New York, on the 24<sup>th</sup> day of April, two thousand eight.

**PRESENT:**

HON. ROSEMARY S. POOLER,  
HON. ROBERT D. SACK,  
HON. DEBRA ANN LIVINGSTON,  
*Circuit Judges.*

XIU MEI CHEN,  
*Petitioner,*

v.

MICHAEL B. MUKASEY, ATTORNEY GENERAL,<sup>1</sup>  
*Respondent.*

07-3443-ag  
NAC

<sup>1</sup>Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as the respondent in this case.

1     **FOR PETITIONER:**             **Yan Wang, New York, New York.**

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3     **FOR RESPONDENT:**           **Jeffrey S. Bucholtz, Acting**  
4                                   **Assistant Attorney General, Richard**  
5                                   **M. Evans, Assistant Director,**  
6                                   **Rebecca A. Niburg, Trial Attorney,**  
7                                   **United States Department of Justice,**  
8                                   **Civil Division, Office of**  
9                                   **Immigration Litigation, Washington,**  
10                                  **District of Columbia.**

11  
12           UPON DUE CONSIDERATION of this petition for review of a  
13     decision of the Board of Immigration Appeals ("BIA"), it is  
14     hereby ORDERED, ADJUDGED, AND DECREED, that the petition for  
15     review is DENIED.

16           Petitioner Xiu Mei Chen, a native and citizen of the  
17     People's Republic of China, seeks review of the August 2,  
18     2007 order of the BIA affirming the October 3, 2005 decision  
19     of Immigration Judge ("IJ") Margaret McManus, denying her  
20     application for asylum, withholding of removal, and relief  
21     under the Convention Against Torture ("CAT"). *In re Xiu Mei*  
22     *Chen*, No. A95 673 158 (B.I.A. Aug. 2, 2007), *aff'g* No. A95  
23     673 158 (Immig. Ct. N.Y. City Oct. 3, 2005). We assume the  
24     parties' familiarity with the underlying facts and  
25     procedural history of the case.

26           When the BIA does not expressly "adopt" the IJ's  
27     decision, but its brief opinion closely tracks the IJ's  
28     reasoning, this Court, for the sake of completeness, may

1 consider the IJ's decision in reviewing the BIA's if doing  
2 so does not affect our ultimate conclusion. *Jigme Wangchuck*  
3 *v. Dep't Homeland Sec.*, 448 F.3d 524, 528 (2d Cir. 2006).  
4 We review *de novo* questions of law and the application of  
5 law to undisputed fact. *See Manzur v. Dep't Homeland Sec.*,  
6 494 F.3d 281, 288-89 (2d Cir. 2007). We review the agency's  
7 factual findings under the substantial evidence standard. 8  
8 U.S.C. § 1252(b)(4)(B); *see Dong Gao v. BIA*, 482 F.3d 122,  
9 126 (2d Cir. 2007).

10 We find that the agency did not err in denying Chen's  
11 asylum claim based on her alleged "resistance" to China's  
12 planned birth policy. *See Shi Liang Lin v. U.S. Dep't of*  
13 *Justice*, 494 F.3d 296, 312-13 (2d Cir. 2007) (*en banc*)  
14 (citing 8 U.S.C. § 1101(a)(42)). The agency properly noted  
15 that Chen did not allege that she experienced any harm in  
16 China on account of the May 2003 incident at her sister's  
17 home. Regarding her claim that she has a well-founded fear  
18 of persecution on the basis of that incident, the agency  
19 properly found that there was insufficient evidence in the  
20 record to establish that the government maintained any  
21 interest in persecuting her. Moreover, even assuming that  
22 Chen is correct that she will face a "penalty" in China on

1 account of her alleged resistance, she does not point to any  
2 evidence that such a penalty would rise to the level of  
3 persecution. See *Xiu Fen Xia v. Mukasey*, 510 F.3d 162, 166  
4 (2d Cir. 2007).

5 Regarding Chen's fear of persecution under China's  
6 family planning policy based on the birth of her United  
7 States citizen daughter, we find no error in the agency's  
8 conclusion that this fear was not well-founded where Chen  
9 has only one child. See *Jian Xing Huang v. INS*, 421 F.3d  
10 125, 128-29 (2d Cir. 2005). Chen herself testified that the  
11 family planning policy as enforced in her home province of  
12 Fujian would allow her to have more than one child because  
13 she possesses a rural, or agricultural, household  
14 registration and because her firstborn was a girl. The U.S.  
15 State Department's Asylum Profile (found in the record)  
16 confirms that married couples in Fujian are allowed to have  
17 one child without applying for permission and that residents  
18 of rural areas enjoy more flexibility in having a second  
19 child. In light of the foregoing, the agency reasonably  
20 concluded that Chen failed to establish a well-founded fear  
21 of persecution on this basis.

22 Finally, while Chen argues that the agency erroneously

1 denied her application for CAT relief, she fails to point to  
2 any record evidence that would contravene the agency's  
3 finding that she did not establish that it was more likely  
4 than not that she would face torture in China. See 8 C.F.R.  
5 §§ 1208.16(c), 1208.17; *Khouzam v. Ashcroft*, 361 F.3d 161,  
6 168 (2d Cir. 2004). As such, the agency's denial of CAT  
7 relief was not improper.

8 For the foregoing reasons, the petition for review is  
9 DENIED.

10 FOR THE COURT:  
11 Catherine O'Hagan Wolfe, Clerk  
12

13 By: \_\_\_\_\_